

12485 Malody  
PLE



**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

FILE: B-194576

DATE: January 10, 1980

MATTER OF: Ricardo S. Morado - [Excused Absence]

**DIGEST:** Employee informally learned that his agency had completed termination action and was going to separate him for cause on March 10, 1979. His supervisor authorized him to leave work on March 5, 1979. The separation date was later changed to March 16, but employee did not return to work. He may be compensated for period March 5 through 10, 1979, because he was authorized to leave pending separation with understanding that his absence was excused. However, he may not be compensated for period after March 10, 1979, since he had no reason to believe that he would be on rolls after that date.

This decision responds to a request by R. J. White, a certifying officer of the Community Services Administration (CSA), *AGC00177* concerning its authority to grant 80 hours of administrative leave to an employee immediately prior to his removal from the service for cause. Pursuant to his authority under CSA Delegation of Authority Orders 77-6 and 77-7, the Regional Director has approved 80 hours of administrative leave for Mr. Ricardo S. Morada covering the period from March 5 through 16, 1979. The certifying officer has withheld payment for the 80 hours pending our decision.

For the reasons stated below, we hold that Mr. Morado may be compensated for 40 hours excused absence from March 5 through 10, 1979, but not for the additional 40 hours between March 10 and March 16, 1979.

On March 2, 1979, incident to its prior termination proposal, the Regional Office of CSA received a copy of a final decision letter separating Mr. Morado for cause on March 10, 1979. Mr. Morado, on March 5 through informal channels, learned that he was to be terminated on March 10. He went to his immediate supervisor and, after a discussion, the supervisor authorized him to leave work without specifying the type of leave to be charged.

The Regional Director supports the supervisor's action and states that, if he had been notified on March 5, he would have

~~008251~~  
111246

B-194576

placed Mr. Morado on administrative leave at that time. He says he would have done so based on his knowledge of the case, the concerns of other Regional Office employees, and statements that Mr. Morado and his lawyer had previously made to him.

When Mr. Morado left work on March 5, he was under the impression that he was to be separated for cause effective March 10, 1979. However, another defect in the termination letter was discovered and the corrected letter of final termination was again delayed. When, on March 8, a final corrected letter was received, the regional officials attempted to contact Mr. Morado to make personal service, but without success. At that point out of an abundance of caution, the Regional Office obtained authority from agency headquarters to change the termination date to March 16, 1979, and to serve the letter on Mr. Morado by certified mail. The Regional Director then approved an additional 40 hours administrative leave for Mr. Morado to cover the work period until March 16.

This Office has recognized over the years that, in the absence of statute, the agency heads, in certain situations are authorized to excuse employees for brief periods of time without charge to leave or loss of pay. 44 Comp. Gen. 333 (1964); B-180693, May 23, 1974. Each agency has the responsibility for determining the appropriate circumstances for excused absences without charge to leave. 54 Comp. Gen. 706 (1975). The Federal Personnel Manual, published by the Office of Personnel Management also recognizes that agencies generally determine the situations in which they will administratively excuse employees from duty without charge to leave or loss of pay. FPM chapter 630, subchapter 11.

Applying these general principles to a disciplinary action situation, such as involved here, agencies are limited in their rights to place employees on enforced leave. As stated in Federal Personnel Manual, FPM chapter 751, subchapter 1-3b, in disciplinary situations, the placing of an employee on leave without his consent constitutes a suspension requiring the use of suspension procedures. See 40 Comp. Gen. 312 (1960).

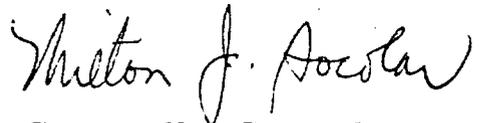
The Regional Director states that placing Mr. Morado on enforced leave without pay is tantamount to invoking the termination action in advance of the prescribed effective date. We agree but

B-194576

only as to the period ending March 10, which was the intended termination date at the time Mr. Morado was authorized to leave. As to that period, we believe that it was within the CSA's discretion to place Mr. Morado on authorized absence with pay. The supervisor's action in this regard was ratified by the Regional Director who had knowledge of the facts and who also had delegated authority to approve administrative leave. It is analogous to the authority to allow up to 5 days excused absence during investigations of employees preliminary to a determination to remove or suspend. FPM chapter 751, subchapter 1-3; 38 Comp. Gen. 203 (1958).

However, we cannot agree that Mr. Morado should be paid for the period after March 10. When Mr. Morado left work he understood that he was to be separated for cause on March 10. He had no reason to believe that he would be retained on the rolls after that date. The separation date was postponed only because regional officials were unable to find Mr. Morado on March 8 to deliver the termination notice to him. He did not return to work and he made no attempt to return. Accordingly, he is not entitled to compensation after March 10, 1979.

Consistent with the foregoing, Mr. Morado may be compensated for the 40 hours of excused absence during the period of March 5 through 10, 1979, but not for the period after March 10, 1979.



For The Comptroller General  
of the United States